REMARKS

Claims 1-21 are pending in the present application.

Applicants wish to thank Examiner Winkler for the helpful and courteous discussion with their undersigned Representative on August 19, 2004. During this discussion, several amendments and arguments were discussed to address the outstanding rejections. The content of this discussion is reflected in the amendments and remarks set forth herein. Reconsideration is respectfully requested.

The rejections of: (a) Claims 1-4 and 6 under 35 U.S.C. §102(b) over Matson et al; (b) Claims 1-4 and 6 under 35 U.S.C. §102(e) over Estes et al (U.S. 6,572,862); (c) Claims 1-4 and 6 under 35 U.S.C. §102(e) over Estes et al (U.S. 6,156,833); and (d) Claims 1-4 under 35 U.S.C. §102(b) over Lew et al, are traversed.

The foregoing rejections are based on the previous recitation of the term "partial peptides thereof." The Examiner has taken the position that this limitation lacks a clear definition of the "partial peptides" and, therefore, fails to ensure that the partial peptides do not embrace structural elements and/or sequence elements that are also present in any of the other SRSV peptides presented in the claims. In addition, the Examiner asserts that the lack of a recited length and the identity of a specific epitope contained in the partial peptide would fail to distinguish the claims from the art of record.

Applicants make no statement in regard to the propriety of these assertions by the Examiner and in no way acquiesce to the same; however, Applicants have canceled the objected to term from the claims. MPEP §2131 sets forth the standard for determining anticipation and states that in order for a reference to anticipate an invention, the reference

"must teach every element of the claim." As presently claimed, the claims require 4 (see Claim 4), 7 (see Claim 5), or 11 (see Claim 1) different antibodies against peptides present in different SRSV-related viruses. Each of these antibodies constitute an "element" of the claim and, as such, in order to anticipate the claimed kit a single reference must teach every one of these elements. This is a feat that the art of record either individually or collectively fails to appreciate. Therefore, the art of record fails to anticipate the claimed invention. Specifically, Matson et al, Estes et al (U.S. 6,572,862), Estes et al (U.S. 6,156,833), Lew et al fail to disclose or suggest every element of the rejected claims as required to anticipate a claim (see MPEP §2131).

Withdrawal of these grounds of rejection is requested.

The rejections of Claims 1-4 and 6 under 35 U.S.C. §112, first paragraph (written description and enablement), are obviated by amendment.

Although the Examiner concedes that the "partial peptides" must be antigenic (*i.e.*, elicit a reaction with the claimed antibodies) and, as such, *minimally* contain a linear epitope of 6 amino acids, the Examiner has maintained her position that this limitation lacks sufficient description and enablement absent guidance of the sequence length and/or identity.

Moreover, the Examiner has indicated that lack of clear definition of the "partial peptides" fails to ensure that the partial peptides do not embrace structural elements and/or sequence elements that are also present in any of the other SRSV peptides presented in the claims. Applicants note that the claims have been amended to remove the term "partial peptides thereof" thus obviating this ground of rejection.

Turning to the Examiner's enablement rejection in regard to antibodies directed to peptides having 80% homology to SEQ ID NOs:1-11, Applicants note that one of skill in the

art would be able to readily practice the currently claimed invention without undue experimentation. In particular, Applicants submit that, with the present application in hand and the guidance provided by the Examples, the artisan would be able to easily raise polyclonal antibodies directed to polypeptides having 80% homology to SEQ ID NOs:1-11 (making s polypeptide sequences falling within this scope is conceded as being "well within the skill of those in the art;" see June 23, 2004 Office Action page 7, lines 17-19), as well as screen for its reactivity and specificity to the other recited peptides to ensure no cross-reactivity in accordance with the claimed invention and specifically detailed in the Examples.

MPEP § 2164.01 states:

> The test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation.

For the reasons set forth above, Applicants submit that the skilled artisan could make or use the claimed invention without undue experimentation. Accordingly, these grounds of rejection should be withdrawn.

The rejections of Claims 1-4 and 6 under 35 U.S.C. §112, second paragraph, are obviated by amendment.

The pending claims have been amended to remove the term "partial peptides thereof," which the Examiner has found indefinite. The claims have also been amended to more particularly define the components of the kit.

In view of the foregoing, the claimed invention is free from the Examiner's criticism and, as such, this ground of rejection is no longer tenable and should be withdrawn.

Applicants submit that the present application is in condition for allowance. Early notification to this effect is respectfully requested.

Respectfully submitted,

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